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C O R R E C T E D C O P Y (LINE 4, PARA 5 OMITTED)

E.O. 11652: N/A

TAGS: EINV, ETRD

SUBJECT: COUNTRY ELIGIBILITY FOR GENERALIZED PREFERENCES

(GSP) UNDER SECS 502 (B) (4) AND (6) OF TITLE V OF

THE TRADE ACT OF 1974

REFS: (A) STATE 282968; (B) STATE 282967

1. AS REPORTED REF B, BEFORE GSP CAN BE IMPLEMENTED
UNDER THE TRADE ACT OF 1974, THE INTERNATIONAL TRADE
COMMISSION (ITC) MUST INVESTIGATE THE DOMESTIC
ECONOMIC EFFECT OF PREFERENTIAL DUTY-FREE TARIFF

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TREATMENT ON IMPORTS OF THOSE ARTICLES PROPOSED FOR
SUCH TREATMENT FROM COUNTRIES DESIGNATED IN AN

EXECUTIVE ORDER AS BENEFICIARY DEVELOPING COUNTRIES.
THIS MESSAGE DISCUSSES COUNTRY ELIGIBILITY UNDER THE
NATIONALIZATION AND ARBITRATION PROVISIONS OF THE ACT.

2. SEC 502 (B) (4) OF TITLE V OF THE ACT PROHIBITS
THE PRESIDENT FROM DESIGNATING AS ELIGIBLE FOR GSP
ANY COUNTRY WHICH HAS NATIONALIZED THE PROPERTY OF
U.S. CITIZENS (INCLUDING CORPORATIONS, PARTNERSHIPS
OR ASSOCIATIONS 50 PERCENT OR MORE BENEFICIALLY OWNED
BY U.S. CITIZENS), OR TAKEN OTHER ACTIONS WITH SIMILAR
EFFECT, UNLESS HE DETERMINES THAT FAIR COMPENSATION

IS BEING PAID, THAT SUCH COUNTRY IS QUOTE OTHERWISE
TAKING STEPS TO DISCHARGE ITS OBLIGATIONS UNDER
INTERNATIONAL LAW, END QUOTE OR THAT THE PARTIES HAVE
SUBMITTED THE DISPUTE TO ARBITRATION. SEC 502 (B)
(6) APPLIES A SIMILAR PROHIBITION TO ANY COUNTRY
WHICH FAILS TO ACT IN GOOD FAITH TO RECOGNIZE AS
BINDING OR TO ENFORCE AN ARBITRAL AWARD IN FAVOR
OF U.S. CITIZENS (AGAIN INCLUDING CORPORATIONS,
PARTNERSHIPS OR ASSOCIATIONS 50 PERCENT OR MORE
BENEFICIALLY OWNED BY U.S. CITIZENS). FYI. UNLIKE
THE HICKENLOOPER AMENDMENT (SEC 620 (E) OF THE
FOREIGN ASSISTANCE ACT), SEC 502 (B) (4) (D) REQUIRES
A PRESIDENTIAL DETERMINATION TO BE MADE AND FURNISHED
TO CONGRESS REGARDING THE APPLICATION OF THAT SUBSECTION
TO ALL UNRESOLVED DISPUTES. THIS NEW REQUIREMENT
REINFORCES THE NEED FOR THE USG TO MONITOR AND TO ASSIST
IN RESOLVING OUTSTANDING DISPUTES INVOLVING U.S.
PROPERTY. END FYI.

3. IT WOULD BE HIGHLY DESIRABLE FOR THE ITC TO
UNDERTAKE ITS PRODUCT REVIEW WITH RESPECT TO THE
BROADEST POSSIBLE LIST OF POTENTIAL BENEFICIARIES,
AND FOR THE COMMISSION TO BEGIN ITS WORK AS SOON
AS POSSIBLE. WE WOULD PREFER TO CONDUCT A DETAILED
INVESTIGATION OF CASES WHICH MIGHT AFFECT HOST COUNTRY
ELIGIBILITY UNDER SECS. 502 (B) (4) AND (6) WHILE
THE ITC STUDY IS IN PROGRESS. FOLLOWING DISCUSSIONS
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WITH CONGRESSIONAL STAFFS, HOWEVER, IT IS NOT CLEAR
THAT THE INTERIM WAIVER MENTIONED PARA. 4 REF B WILL
BE USED. SEVERAL ALTERNATIVE METHODS OF ACCOMPLISHING
OUR OBJECTIVE ARE ALSO UNDER CONSIDERATION, BUT IT
IS POSSIBLE THAT DETERMINATIONS OF COUNTRY ELIGIBILITY
MAY HAVE TO BE MADE BEFORE THE ITC CAN BEGIN ITS
PRODUCT ANALYSIS.

4. ACCORDINGLY, POSTS ARE REQUESTED TO INFORM THE
DEPARTMENT ASAP OF THE STATUS OF OUTSTANDING CASES, IF

ANY, WHICH MIGHT AFFECT HOST COUNTRY ELIGIBILITY
UNDER SECS. 502 (B) (4) AND (6). A NEGATIVE REPORT, IF
APPROPRIATE, WILL BE HELPFUL.

5. THE STARTING POINT FOR EVALUATION SHOULD BE THE
TEXT OF THE LEGISLATION ITSELF. UNTIL DEFINITIVE
LEGAL ANALYSIS OF 502 (B) (4) IS COMPLETED, POSTS
SHOULD ASSUME IT APPLIES TO ALL PROPERTY (BOTH COMMERCIAL
AND NON-COMMERCIAL) OF U.S. CITIZENS, WITHOUT REGARD
TO VALUE. AS A QUOTE RULE OF REASON, END QUOTE WE
ARE LIMITING THE EVALUATION TO CASES ARISING IN THE
POST-WAR ERA, I.E., SINCE JANUARY 1, 1946, OR THE DATE
OF INDEPENDENCE OF THOSE COUNTRIES RECEIVING INDEPENDENCE,

WHICHEVER IS LATER. SINCE SOME ACTIONS (SUCH AS
COERCED PARTICIPATION, SEVERE CURTAILMENT OF MANAGEMENT
PREROGATIVES, OR FORCED CANCELLATION OR RENEGOTIATION
OF CONTRACTS) MAY BE EXPROPRIATORY IN EFFECT WHILE
STOPPING SHORT OF OUTRIGHT TAKEOVER, POST IS REQUESTED
TO INFORM DEPARTMENT OF SUCH CASES TO ENABLE US TO
EXERCISE JUDGMENT IN DETERMINING WHETHER QUOTE NATIONALI-
ZATION END QUOTE HAS OCCURRED WITHIN THE MEANING OF
502 (B) (4)(A)-(C). JUDGMENTS MUST ALSO BE MADE TO
DETERMINE, INTER ALIA, WHETHER THE CRITERIA OF
502 (B) (4)(D) ARE BEING MET, AND WHETHER QUOTE GOOD
FAITH END QUOTE IS PRESENT UNDER 502 (B) (6).

6. IF APPLICABLE, WOULD ALSO APPRECIATE MISSION
COMMENTS REGARDING WHAT STEPS USG MIGHT APPROPRIATELY
TAKE TO BRING THESE PROVISIONS TO THE ATTENTION OF
HOST GOVERNMENT OFFICIALS AND TO ENCOURAGE RESOLUTION
OF OUTSTANDING DISPUTES. KISSINGER
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